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9 **BEFORE THE**  
10 **BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-19

13 **MELANIE KAWECK, AKA**

14 **MELANIE ANN KAWECK**

3416 Circle Court East

Fresno, CA 93703

15 Registered Nurse License No. 485335

16 Respondent.

**ACCUSATION**

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing  
22 ("Board"), Department of Consumer Affairs.

23 **Registered Nurse License**

24 2. On or about October 31, 1992, the Board issued Registered Nurse License  
25 No. 485335 to Melanie Ann Kaweck, also known as Melanie Kaweck ("Respondent"). The  
26 registered nurse license will expire on October 31, 2010, unless renewed.

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4. Code section 2725 states, in pertinent part:

The policies and protocols shall be subject to any guidelines for standardized procedures that the Division of Licensing of the Medical Board of California and the Board of Registered Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the Board of Registered Nursing.

1 (d) Nothing in this section shall be construed to require approval of  
2 standardized procedures by the Division of Licensing of the Medical Board of  
California, or by the Board of Registered Nursing.

3 (e) No state agency other than the board may define or interpret the  
4 practice of nursing for those licensed pursuant to the provisions of this chapter, or  
develop standardized procedures or protocols pursuant to this chapter, unless so  
5 authorized by this chapter, or specifically required under state or federal statute.  
"State agency" includes every state office, officer, department, division, bureau,  
6 board, authority, and commission.

7 5. Code section 2761 states, in pertinent part:

8 The board may take disciplinary action against a certified or licensed nurse  
9 or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to, the  
following:

11 (1) Incompetence, or gross negligence in carrying out usual certified or  
12 licensed nursing functions.

13 6. Code section 2762 states, in pertinent part:

14 In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
under this chapter to do any of the following:

16 (a) Obtain or possess in violation of law, or prescribe, or except as  
17 directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
himself or herself, or furnish or administer to another, any controlled substance as  
18 defined in Division 10 (commencing with Section 11000) of the Health and Safety  
Code or any dangerous drug or dangerous device as defined in Section 4022.

19 (b) Use any controlled substance as defined in Division 10  
20 (commencing with Section 11000) of the Health and Safety Code, or any  
dangerous drug or dangerous device as defined in Section 4022, or alcoholic  
21 beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
any other person, or the public or to the extent that such use impairs his or her  
22 ability to conduct with safety to the public the practice authorized by his or her  
license.

23 7. Code section 2764 provides, in pertinent part, that the expiration of a  
24 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding  
25 against the licensee or to render a decision imposing discipline on the license. Under Code  
26 section 2811, subdivision (b), the Board may renew an expired license at any time within eight  
27 years after the expiration.

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8. Code section 4060 provides, in pertinent part,

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

### **REGULATORY PROVISIONS**

9. California Code of Regulations, title 16 ("Regulation"), section 1443 states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

10. Regulation section 1443.5 states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

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(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

## COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**DRUG**

12. **"Amphetamine"** is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(1), and is a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription.

## BACKGROUND

13. At all times herein mentioned, Respondent was employed by AMN Healthcare, Inc., as a traveling nurse on assignment in the Labor and Delivery Unit at Tri-City Medical Center ("TCMC") in Oceanside, California.

14. On or about June 13, 2005, Respondent submitted to TCMC's laboratory a patient's laboratory specimen with initials that were illegible.

15. On or about June 13, 2005, Respondent's charting of Patient A, an in-patient at TCMC, was incomplete, lacking content, and illegible.

16. On or about June 14, 2005, Respondent performed a phlebotomy on Patient B during Patient B's admission at TCMC. Patient B complained that the phlebotomy was painful due to Respondent's jerky body movements.

17. On or about June 16, 2005, while Patient C was at TCMC, Respondent's shaky body movements while catheterizing her caused pain and trauma to Patient C's urethra.

18. On or about August 10, 2005, while on nursing duty at TCMC, Respondent, complaining of shoulder pain, took leave of her duties and went to TCMC's emergency department. Respondent exhibited combative and extreme behavior while she was in

1 TCMC's emergency department. Respondent's attending physician ordered a drug screen and  
2 discussed lab results and her need for further treatment. In response, Respondent, in an agitated  
3 state, removed an IV from her arm and left TCMC's emergency department against medical  
4 advice. Respondent's drug test was positive for amphetamine.

### 5 **FIRST CAUSE FOR DISCIPLINE**

#### 6 **(Incompetence)**

7 19. Respondent's registered nurse license is subject to disciplinary action  
8 under Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that  
9 between on or about June 13, 2005 and August 10, 2005, while on duty as a registered nurse at  
10 TCMC, Respondent was guilty of incompetence as set forth above in paragraphs 14 to 18, within  
11 the meaning of Regulation 1443, as follows:

12 a. On or about June 13, 2005, Respondent failed to write initials legibly on a  
13 patient's laboratory specimen.

14 b. On or about June 13, 2005, Respondent failed to chart for Patient A in a  
15 complete, legible manner, and with content.

16 c. On or about June 14, 2005, Respondent failed to perform a phlebotomy on  
17 Patient B in a manner that did not cause unnecessary pain.

18 d. On or about June 16, 2005, Respondent failed to catheterize Patient C in a  
19 manner that did not cause unnecessary pain and trauma.

20 e. On or about August 10, 2005, while on nursing duty, Respondent tested  
21 positive for amphetamine, a controlled substance, for which she did not have a prescription.

### 22 **SECOND CAUSE FOR DISCIPLINE**

#### 23 **(Unprofessional Conduct)**

24 20. Respondent's registered nurse license is subject to disciplinary action  
25 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, in that  
26 between on or about June 13, 2005, and August 10, 2005, while on duty as a registered nurse at  
27 TCMC, Respondent committed acts constituting unprofessional conduct, as set forth in  
28 paragraphs 14 to 18.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Possess a Controlled Substance in Violation of Law, and Self-Administer)

3 21. Respondent's registered nurse license is subject to disciplinary action  
4 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct as defined in  
5 Code section 2762, subdivision (a), in that on or about August 10, 2005, Respondent did the  
6 following:

7 a. Respondent possessed amphetamine, a controlled substance, in violation  
8 of Code section 4060.

9 b. Respondent self-administered amphetamine, a controlled substance,  
10 without direction from a licensed physician, surgeon, dentist or podiatrist, as more fully set forth  
11 in paragraph 18, above.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Use of Drugs - Danger to Others)

14 22. Respondent's registered nurse license is subject to disciplinary action  
15 under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined  
16 in Code section 2762, subdivision (b), in that on or about August 10, 2005, while on duty as a  
17 registered nurse at TCMC, Respondent used amphetamine, a controlled substance, in a manner  
18 dangerous or injurious to herself and others, as more fully set forth in paragraph 18, above.

19 **PRAYER**

20 **WHEREFORE**, Complainant requests that a hearing be held on the matters  
21 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

22 1. Revoking or suspending Registered Nurse License No. 485335, issued to  
23 Melanie Ann Kaweck, also known as Melanie Kaweck;

24 2. Ordering Melanie Ann Kaweck, also known as Melanie Kaweck, to pay  
25 the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this  
26 case, pursuant to Business and Professions Code section 125.3; and

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1                    3.        Taking such other and further action as deemed necessary and proper.

2    DATED: 7/17/08

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RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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